



New FATCA FAQs, consolidated compliance group status application due date and public hearing on proposed FATCA regulations

Closing the distance

The IRS issued new FATCA FAQs, an alert regarding consolidated compliance group (CCG) status application due date, and a notice about public hearing on proposed FATCA Regulations

Over the last few weeks, the IRS published new and updated FATCA FAQs related to FATCA registration accounts placed in "Registration Rejected/Denied" status, sponsoring entities submitting certifications for a sponsored entity which is closed or terminated, taxes and penalties on dividend equivalent payments made with respect to a derivative referencing a partnership, and withholding and reporting under the new lag method rules. The IRS also recently issued an alert about the CCG status application due date and a notice of a public hearing on proposed FATCA regulations. More details on these IRS publications are presented below.

FAQ regarding FATCA registration accounts placed in "Registration Rejected/Denied" status

The IRS added [FAQ 17](#) to the Registration Update section of the [FATCA General FAQ page, which](#) explains that a FATCA registration account will be considered inactive and will be placed in Registration Rejected/Denied status if the account stays in any of the following statuses for more than six months: (a) "Initiated" (b) "Registration Incomplete" or (c) "Under Review". If the account is placed in Registration Rejected/Denied status, the account holder will still have access to the account message board; however, other account options will not be available. If such account holder needs a GIIN and meets the relevant requirements, it must submit a new FATCA Registration.

FAQ regarding sponsoring entities submitting certifications for the sponsored entity which is closed/terminated

The IRS added [FAQ 19](#) to the FATCA Certification Section of the [FATCA FAQs General page, which](#) explains how a sponsoring entity must complete and submit a certification for its sponsored entity(s) which were closed or terminated and therefore are not reflected in the Sponsored Entity Table for selection. The IRS advises sponsoring entities to include the name(s) and GIIN(s) of closed/terminated sponsored entities that are being included in the certification in the business description text box of the certification page. The IRS also advises such sponsoring entities to keep all records related to the closed/terminated sponsored entities that were included in the certification, so that they can be provided upon request.

The business description section of the certification page has a character limitation; therefore, if the space provided in the business description text box is not enough to include all of the closed/terminated sponsored entities for which the

certification applies, sponsoring entities should specify in that text box that additional entities not listed are part of the certification and that a list of all sponsored entities will be provided to the IRS upon request.

FAQ regarding taxes and penalties on dividend equivalent payments made with respect to a derivative referencing a partnership

The IRS updated [FAQ 23](#) under Compliance section of the [FATCA FAQs General page which](#) explains that, for 2017 and 2018, a withholding agent will not be subject to interest, penalties, or additional taxes for failing to withhold and report a payment of a dividend equivalent made with respect to a derivative referencing a partnership by March 15 of the subsequent year, if the withholding agent withholds and reports the payment on a Form 1042 and Form 1042-S by September 17, 2018 (for the 2017 calendar year) or September 16, 2019 (for the 2018 calendar year). If the withholding is completed after March 15th of the subsequent year, the withholding agent should file a Form 1042 (if the dividend equivalent payments are the only payments reportable for the year) or an amended Form 1042 by September 17, 2018 or September 16, 2019 (as applicable) and write "Dividend Equivalent—Partnership" in the top center portion of the 2017 or 2018 Form 1042. The withholding agent should also file Form(s) 1042-S or amended Form(s) 1042-S by the applicable date noted above with respect to the dividend equivalent payments. Finally, when depositing the tax withheld for a dividend equivalent payment made in 2017 or 2018, the withholding agent must designate the payment as being made for the applicable calendar year in accordance with the instructions to Form 1042.

FAQ regarding withholding and reporting under the lag method

The IRS added [FAQ 24](#) to the Compliance section of the [FATCA FAQs General page which](#) states that a partnership or trust that is permitted to withhold in 2019 with respect to a foreign partner's or beneficiary's share of undistributed income for the 2018 year, may designate the deposit of the withholding as for the 2018 year and report the associated amount on the 2018 Forms 1042 and 1042-S (notwithstanding the instructions for the 2018 Form 1042).

Proposed regulations issued on December 18, 2018 (83 FR 64757) ("Proposed Regulations") allow a partnership or trust that withholds in a subsequent year with respect to a foreign partner's or beneficiary's share of undistributed income for the prior year to designate the deposit of the withholding as attributable to the preceding year and report the associated amount on Forms 1042 and 1042-S for the preceding year. The Proposed Regulations also extended the due date for partnerships to file Form(s) 1042-S until September 15 if it withholds tax after March 15th of the subsequent year and it is designating it as deposited for the preceding year.

In addition, for tax year 2018, to the extent that a calendar year partnership or trust applies the Proposed Regulations, the partnership or trust will not be assessed any penalty associated with its reliance on the regulations; in the instances where the penalty has been assessed, the partnership or trust may have the penalty cancelled.

To avoid a penalty associated with its deposit of the tax when applying the above approach for the 2018 year, the partnership or trust should write "Withholding under the Lag Method" on the top center portion of the 2018 Form 1042. Any amount withheld in 2019 that is designated for the 2018 year should be reported on Line 65 of Form 1042 as paid in subsequent year. In such a case, a partnership or trust must report the income and the amounts withheld on a Form 1042-S for 2018.

IRS alert regarding CCG status application due date

The [IRS announced](#) that the qualified intermediary (QI), withholding foreign partnership (WP), and withholding foreign trust (WT) application and account management system is open for the application to form a consolidated compliance group for certifications due in 2019 and that the application must be submitted no later than April 1, 2019.

Upon receipt of the application, the IRS will request any further information that they may deem necessary in order to make an assessment. The IRS may also discuss the final composition of the CCG and sample design for any statistical sampling to be used for the periodic review with the applicant.

The IRS warns prospective applicants that they should select 2017 or 2018 as the periodic review year and that the IRS will not approve CCG applications that select 2016 as the periodic review year for a certification due in 2019.

The prospective applicants may find assistance on technical matters relating to the CCG application in the QI, WP, and WT Application & Account Management User Guide ([Publication 5262](#)). QI/WP/WT entities should also follow updates on [Certifications and Periodic Reviews FAQs](#) on the IRS web page that provide additional guidance to interested parties. Before applying for CCG status, the prospective applicant should also ensure that they are compliant with all filing requirements (including Forms 1042, 1042-S, 945, 1099, and 8966), and any related withholding payments are up-to-date.

Notice on public hearing on proposed FATCA Regulations

The IRS published a [notice of public hearing](#) on the proposed regulations that eliminated withholding on payments of gross proceeds, deferred withholding on foreign pass thru payments, eliminated withholding on certain insurance premiums, and clarified the definition of investment entity. The public hearing is being held on Wednesday, April 10, 2019, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. For further information, the interested parties may advise the original notice at the Federal Register page: [Link](#)

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